



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

#### **42 CFR Parts 413 and 512**

**[CMS-1749-CN]**

**RIN 0938-AU39**

### **Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model; Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographic error that appeared in the final rule published in the **Federal Register** on November 8, 2021 entitled “Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals With Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, and End-Stage Renal Disease Treatment Choices Model.”

**DATES:** This correction is effective January 1, 2022.

#### **FOR FURTHER INFORMATION CONTACT:**

ESRDPayment@cms.hhs.gov, for issues related to the ESRD PPS and coverage and payment for renal dialysis services furnished to individuals with AKI.

ESRDApplications@cms.hhs.gov, for issues related to the Transitional Add-On Payment Adjustment for New and Innovative Equipment and Supplies (TPNIES).

Delia Houseal, (410) 786-2724, for issues related to the ESRD QIP.

ETC-CMMI@cms.hhs.gov, for issues related to the ESRD Treatment Choices (ETC) Model.

#### **SUPPLEMENTARY INFORMATION:**

## **I. Background**

In FR Doc. 2021-23907 of November 8, 2021 (86 FR 61874), there was a typographic error that is identified and corrected by the Correction of Errors section below. The correction in this document is effective as if it had been included in the document published November 8, 2021. Accordingly, the correction is effective January 1, 2022.

## **II. Summary of Error**

On page 61874, in the third sentence of the first column, we inadvertently left the number "412" in the CFR citation at the top of the document. Therefore, the number "412" should be deleted.

## **III. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects a typographic error and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. Thus, this correcting document is intended to ensure that the information is accurately reflected in the final rule.

Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the correction in this document into the calendar year (CY) 2022 End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) final rule or delaying the effective date of the correction would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the CY 2022 ESRD PPS final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

#### **IV. Correction of Errors**

In FR Doc. 2021-23907 of November 8, 2021 (86 FR 61874), make the following correction:

On page 61874, in the first column; in the third sentence, remove the number "412" from the CFR citation.

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**Karuna Seshasai,**

Executive Secretary to the Department,

Department of Health and Human Services.